

Both liberals and conservatives are upset over President Bush's nomination of Harriet Miers to fill the vacancy of conservative-moderate Associate Justice Sandra Day O'Connor on the Supreme Court.

The difference? Conservatives are on point as to why they are displeased with the nomination. Liberals are not.

Disappointed conservatives are approaching the nomination from an *ideological* perspective and they are not sure Harriet Miers is pure enough for them. Liberals are concerned about the lack of a paper trail and judicial record by which they can judge her views on the *issues* 

. Liberals have the cart before the horse.

Supreme Court interpretation of *issues* flows from the *structure* of a *broad ideological* framework. Philosophically,

that structure may lead a Justice to interpret the Constitution in broad

or

narrow

terms. A Justice will see the Constitution as

static

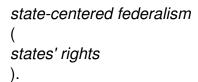
- as a "strict constructionist," "originalist" or "literalist" - or as a

living

document. It will lead a Justice to an interpretation that helps to build

a more perfect union

or one that perpetuates



President Bush and his conservative allies are focused on the broad ideological argument out of which Supreme Court interpretation of issues will flow. Liberals are merely focused on the end product - her position on the issues.

Liberal civil rights groups want to know Ms. Miers stand on the issues of affirmative action, economic set-asides, racial discrimination and police-community relations. Liberal voting rights groups want to know whether her interpretation of the criteria for proving voter discrimination in court will be based on proving a discriminatory "effect" or must they prove a discriminatory "intent." Liberal women's groups want to know her views on the issue of abortion and whether there is a right to privacy in the Constitution. Liberal labor wants to know where she stands on labor-management issues.

Liberals don't seem to understand that where she comes down on virtually all of these issues will depend on this

ideological

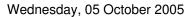
framework. Conservatives are clear.

President Bush is *not* focused on issues. He only wants to make sure that she, like him, is an ideologically oriented state-centered federalist. One only needs to remember how Bush handled the issue of the Confederate Flag in South Carolina during the 2000 presidential campaign to be clear on his orientation ("I'm sure the good people of South Carolina are perfectly capable of deciding this issue"). He knows that in the name of states' rights she will decide the issues in a conservative, narrow, strict constructionist, literal, originalist and static way and not in a way that would help to build a more perfect union.

So while I don't know Ms. Miers personal or religious views on a wide range of *issues* - abortion, civil rights, voting, labor and the environment - I'm virtually certain about her ideological judicial orientation and, therefore, can pretty much predict where she will come down on these issues.

Whether abortion, civil rights, voting rights, labor rights or the environment her basic orientation is going to be - based on the Tenth Amendment - "let the states decide" and "Congress doesn't have the authority."

Do all Americans have an individual citizenship right to vote? No, states' rights are more important than an individual citizen's right to vote. Do all of America's children have the individual right to a public education of equal high quality? No. They have a right to the best education their state, county and local school board can provide. Do all Americans have an individual right to health care of equal high quality? No, we'll let the states, counties and local authorities provide most of that.



The word "slavery" was never in the Constitution. The Tenth Amendment protected that institution. Every state could decide for itself whether slavery was legal or not.

It's that states' rights ideological judicial orientation on which President Bush and conservatives are focused, while most liberals have completely missed the central argument in the Supreme Court nominations debate.